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10/089,420	03/28/2002	Emmanuel Sohier	0572-1000	6999

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BARNES & THORNBURG LLP  
P.O. BOX 2786  
CHICAGO, IL 60690-2786

EXAMINER
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NGUYEN-BA, HOANG-VU A

ART UNIT	PAPER NUMBER
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2623

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/11/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/089,420

Applicant(s)

SOHIER, EMMANUEL

Examiner

Hoang-Vu A. Nguyen-Ba

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 March 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 10/23/02.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This action is responsive to the application filed March 28, 2002.
2. Claims 1-17 have been examined.

#### ***Priority***

3. The priority date considered for this application is September 28, 1999, which is the filing date of the Foreign Application No. FR 99/12196. A certified copy of the priority application has been received within the required 16 months following the claimed priority date and placed in the application file.

#### ***Oath/Declaration***

4. The Office acknowledges receipt of a properly signed oath/declaration filed March 28, 2002.

#### ***Information Disclosure Statement***

5. The Office acknowledges receipt of the Information Disclosure Statement filed October 23, 2002. It has been placed in the application file and the information referred to therein has been considered.

#### ***Drawings***

6. The drawings filed on March 28, 2002 are objected because:  
details and/or legends in some of the items shown in FIGs. 2, 3A-C, 4 and 5 are not legible because of an excessive of contrast contrast (e.g., item 9 in FIG. 2).

***Specification***

7. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which Applicant may become aware in the specification.

8. The specification is objected to because of the following minor informalities:

the Abstract contains items whose reference numeral is inconsistent with that of the corresponding item in the specification (e.g., numeral 13 used for a sensing means in the Abstract is being used for a television screen in the Specification at p. 11, line 23).

The reference numerals in the Abstract are suggested be deleted therefrom.

***Claim Objection***

9. Claims 2, 4-10 and 12-17 are objected to because of the following minor informalities:

Claim 2 recites the limitation "A recording and measuring system according to claim 1" in the preamble. The limitation should be changed to -- A recording system according to claim 1 -- or -- A recording system for measuring media consumer behavior according to claim 1 -- in order to be consistent with the recitation of the same limitation in claim 1.

Claims 4-10 recite the limitation "A media program audience forecasting device according to claim 3" in the preamble. The limitation should be changed to -- A device according to claim 3 -- in order to be consistent with the recitation of the same limitation in claim 3.

Claims 12-17 recite the limitation "An audience forecasting method according to claim 11" in the preamble. The limitation should be changed to -- A method to quantitatively forecast the audience according to claim 11 -- in order to be consistent with the recitation of the same limitation in claim 11.

Claim 16 recites the limitation "audimetry." No definition were found for this limitation, either in the specification or in dictionaries on the Web. For compact prosecution purposes, the limitation "audimetry" is interpreted to mean -- audiometry -- mentioned in Applicant's disclosure at page 10, line 10, which is construed to mean the measure of the number of viewers/listeners of a TV program. It is also noted that the plain meaning of the term "audiometry" is the testing of hearing ability, meaning which is not at all related to the supra assumed meaning for the term.

### ***Claim Rejections – 35 USC §112***

10. The following is a quotation of the second paragraph of the 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claim 15 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recites the limitation "the relevant media" at line 3. This limitation appears to lack proper antecedent basis.

12. Claim 17 is rejected under 35 U.S.C. § 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01.

Claim 17 recites the limitation “a second corrective coefficient” at line 3. The omitted step appears to be one of calculating a first corrective coefficient for correcting the audience rating values as recited in Claim 16.

***Claim Rejections – 35 USC § 102***

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejection under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claim 1-3, 6-7, 10-12 and 15-17 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,532,732 to Yuen et al. (“Yuen”).

**Claim 1**

Yuen discloses at least *a recording system for measuring media consumer behaviour* (see at least FIG. 1a) *comprising:*

*X sets each comprising a control member* (see at least FIG. 1a, item 30) *associated with a media program receiving means* (see at least FIG. 1a, item 14) *and allowing to zap on the said receiving means, the X receiving means being able to receive programs broadcasted via a cable* (see at least FIG. 1a, item 19), *and each receiving means comprising a first remote control infrared decoder* (see at least FIG. 1a, item 40) *functionally associated with the control member, and*

*X electronic devices* (see at least FIG. 1a, item 12) *each comprising a sensing means functionally associated with the control member for detecting at any time the identity of*

*the program listened on the receiving means and for continuously transmitting the information consisting of the identity of the detected program to a computing means (see at least 2:2-4, 15-20) for numerically treating the said information and for delivering audience rating values of the media programs available on the X receiving means, characterised in that, for a precise measure of behaviours and a quantitative audience forecast,*

*the sensing means (see at least FIG. 1a, item 12 which comprises of items 60, 62 shown in FIG. 2) consists of a second remote control infrared decoder (see at least FIG. 1a, item 52) placed at a sufficiently short distance from the first remote control infrared decoder in order to receive the same signal as the latter, and on which are grafted on the one hand an interface with a liaison means (see at least FIG. 2, item 66) for continuously transmitting information to the computing means and on the other hand a device for creating an address code to identify the receiving means concerned by the program changes, and*

*the cable consists of a single coaxial cable (see at least FIG. 1a, item 17, 16, 19) serving the X receiving means, X being at least 4, the said cable being grafted onto each media receiving means in liaison with a program change processor (see at least FIG. 1a, item 20).*

## **Claim 2**

Yuen further discloses *the transmission of information to the computing means is effected by a telephone type cable (see at least FIG. 2, item 68).*

## **Claim 3**

Yuen discloses at least *a device (see at least FIG. 1a) for the audience quantitative forecast of at least one new media program to be tested by reference to one or more media programs having a known audience, characterised in that it comprises:*

*at least a recording means (see at least FIG. 1a, item 12) for the said new program,*

*Y media program broadcasting means (see at least FIG. 1a, item 18), for broadcasting the said recording means as well as at least one program having a known audience, the total number of the media programs to be tested and the programs having a known audience being equal to Y,*

*a set of X media program receiving means (see at least FIG. 1a, item 14), each receiving means being associated with a control member (see at least FIG. 1a, item 30) for zapping from one program to any other available program,*

*a main controller (see at least FIG. 1a, item 42) linked to the X program receiving means for simultaneously broadcasting the recording means of the program to be tested on these program receiving means, and*

*a recording and measuring system (see at least FIG. 1a, item 12) comprising*

*(i) X sensing means (see at least FIG. 2, items 60, 62) for detecting at any time the identity of the program being listened and/or viewed in front of each of the X receiving means,*

*(ii) at least one liaison means (see at least FIG. 2, item 66) for continuously transferring the information consisting of the identity of the detected program to an information storage means (see at least FIG. 3, item 82),*

*(iii) a supervision means (see at least FIG. 2, item 64) interfaced with each sensing means and able to question the main controller and to permanently scan information transferred to the main controller through the liaison means,*

*(iv) and a computing means (see at least FIG. 3, item 80) for numerically treating information stored in the storage means and to deliver at least an audience rating value of the new media program to be tested with reference to at least another media program having a known audience.*



### Claim 6

Yuan further discloses *wherein the Y media program broadcasting means are video-recorders (see at least FIG. 1a, item 18), and wherein the said device (see at least FIG. 1a, item 10) further comprises recording means (see at least FIG. 1a, item 12) for the programs having a known audience, and further wherein the main controller (see at least FIG. 1a, item 42) simultaneously broadcasts the said recording means on the program receiving means (see at least FIG. 1a, item 14).*

### Claim 7

Yuen further discloses that *the Y media program broadcasting means are selected from the group consisting of video-recorders (see at least FIG. 1a, item 18) and hertzian emitters (see at least FIG. 1a, 30), the latter being assigned to the broadcasting of programs having a known audience.*

### Claim 10

Yuen further discloses that *the storage means further comprises files related to the title and duration of the broadcasted program (see at least 6:16-20).*

### Claim 11

Yuen discloses at least *a method to quantitatively forecast the audience of at least one new media program to be tested by reference to one or more media programs having a known audience, characterised in that it consists in bringing a sample of viewers/listeners being representative of a desired target in a condition of free listening, during a period of time T, of a set of media programs of the same type consisting of the said new program and at least a program having a known audience (see at least 1:24-49; 1:64-*

2:20), *in front of a set of X media program receiving means* (see at least FIG. 1a, item 14) *being linked to a main controller simultaneously broadcasting the recording means of the said programs, the free listening condition being assured by X control members of the X receiving means allowing at any time to change program on the receiving means, the identity of the listened program being at any time detected by X sensing means* (see at least FIG. 1a, item 12 and FIG. 2, items 60, 62) *functionally associated to the X control members* (see at least FIG. 1a, item 30), *and then continuously retransmitting* (see at least FIG. 2, item 66) *the identity of the detected program to a computing means* (see at least 1:4, e.g., central computing means) *for numerically handling it and providing audience rating values for the programs available on the X receiving means.*

#### Claim 12

Yuen does not specifically disclose that *T is between 2 and 60 minutes*. However, since Yuen teaching provides means for detecting how long a viewing watches a program, the claimed feature of T being between 2 and 60 minutes is deemed inherent to the teaching of Yuen because Yuen's time duration of the audience monitoring process appear to be programmable.

#### Claim 15

Yuen does not specifically disclose that *the sample is brought in a condition of free listening of a set of programs representing at least 80% of market shares of the relevant media*. However, this feature is deemed inherent to the teaching of Yuen as shown at 1:25-49. According to this portion of Yuen, the viewership data is collected by electronic devices. Once the viewership data is collected, 80% of the viewers could thus be determined. Without the capability of collecting

viewship data, 80% of market shares of the relevant media could not be determined.

#### **Claim 16**

Yuen does not specifically disclose that *in order to standardize the audience rating values, the method is first implemented with a set of programs having a known audience, the obtained results are compared to those observed by audimetry for the same programs with a sample of a bigger size, and a first corrective coefficient is calculated from this comparison for correcting the audience rating values provided by the method implemented in a second place with a set of programs comprising at least a new program to be tested.* However, this feature is deemed inherent to the teaching of Yuen as 1:25-49 shows that advertising rates may be adjusted based on an “after the fact” estimation of the market shares for the televised program. Without these inherent collecting tools and correcting coefficients, adjustment of advertising rates could not be implemented.

#### **Claim 17**

Yuen does not specifically disclose that *the audience rating values provided by the computing means are corrected by a second corrective coefficient for transforming them into projected audience market shares for taking into account the known audience of programs being unavailable, during the test, on the X program receiving means.* However, this feature is deemed inherent to the teaching of Yuen as 1:25-49 shows that advertising rates may be adjusted based on an “after the fact” estimation of the market shares for the televised program. Without these inherent collecting tools and correcting coefficients, adjustment of advertising rates could not be implemented.

***Claim Rejections – 35 USC § 103***

15. The following is a quotation of the 35 U.S.C. § 103(a) which form the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 4-5, 8-9 and 13-14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Yuen, as applied to the base claim.

**Claim 4**

Yuen does not specifically disclose that *X is at least 4*. However, Official notice is taken that it is commonly known in the art that audience monitor or equivalents thereof to have more than one port to communicate with all TV sets in a household because nowadays it is not uncommon for a household to have 4 or more TV sets (one in the family room, one in the dining room/kitchen, one in the master bedroom for parents and one or more in the bedroom(s) for children) for the purpose of better estimating the viewership in households. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Yuen's audience monitor box to interface with more than one TV set for the purpose discussed above.

**Claim 5**

Yuen does not specifically disclose that *Y does not exceed 6*. However, Official notice is taken that it is commonly known that a household nowadays

can have more than 2 bedrooms. Therefore, besides a VCR in the family room and another in the dining room/kitchen, it is not uncommon to find one VCR for each one of the four or more bedrooms. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Yuen's system to accommodate 6 sets of VCR, as this would provide better estimate of the viewship in a household.

#### **Claim 8**

Yuen does not specifically disclose that *wherein a program recording means consists of several sequences separated from each other by a top and further wherein the main controller performs the duty of detecting tops and transmitting this information to the storage means*. However, Official notice is taken that techniques for detecting sequence (e.g., scene) changes between a pre-recorded TV show and commercial advertisements are well known in the art of video and television (e.g., a change from a pre-recorded TV show to commercial advertisements) for monitoring purposes. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use these techniques in Yuen to detect changes in a broadcasted program for the same purpose discussed above.

#### **Claim 9**

Yuen does not specifically disclose *wherein a program recording means consists of several sequences each separated from each other by a top consisting of a signal having a frequency between 1,600 and 2,100 Hz and a duration between 1 and 3 seconds, and further wherein the main controller performs the duty of detecting the said tops and transmitting information to the storage means*. However, Official notice is taken that techniques for detecting sequence (e.g., scene) changes between a pre-recorded

TV show and commercial advertisements are well known in the art of video and television (e.g., a change from a pre-recorded TV show to commercial advertisements) for monitoring purposes. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify these techniques by using an audio signal and use the modified technique in Yuen to detect changes in a broadcasted program for the same purpose discussed above.

### Claim 13

Yuen does not specifically disclose that *X is from 4 to 40*. However, Official notice is taken that it is not uncommon for a retirement home to have more than 4 TV sets. Hence, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Yuen's audience monitor setup to interface with more than 4 TV sets in order to monitor television program viewing for this type of environment.

### Claim 14

Yuen does not specifically disclose *the sample size is from 100 to 200 persons*. However, the sample size of 100 to 200 is considered to be merely a matter of choice made at the central office of how large of a sample should be implemented for the study. The size of the sample does not appear to affect the audience forecasting method since the same steps are required and same equipments are used at the user end. Hence, "a mere scaling up of a prior art process capable of being scaled up, if such were the case, would not establish patentability in a claim to an old process so scaled." *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976). See MPEP 2144.04(IV)(A).

***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoang-Vu "Antony" Nguyen-Ba whose telephone number is (571) 272-3701. The examiner can normally be reached on Tuesday-Friday from 7:15 am to 5:35 pm.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, John Miller can be reached at (571) 272-7353.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2600 Group receptionist (571) 272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).



January 3, 2007

**ANTONY NGUYEN-BA  
PRIMARY EXAMINER**